

1
2
3
4
5
6
7
8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 EMPLOYEE PAINTERS TRUST HEALTH
12 & WELFARE FUND, WESTERN
13 WASHINGTON PAINTERS DEFINED
14 CONTRIBUTION PENSION TRUST,
15 WESTERN WASHINGTON
16 APPRENTICESHIP AND TRAINING
17 TRUST, LABOR MANAGEMENT
18 COOPERATION TRUST FUND,
19 INTERNATIONAL UNION OF PAINTERS
 & ALLIED TRADES PENSION FUND,
INTERNATIONAL BROTHERHOOD OF
PAINTERS & ALLIED TRADES UNION &
INDUSTRY FUND, AND
INTERNATIONAL UNION OF PAINTERS
& ALLIED TRADES DISTRICT COUNCIL
NO. 5,

20 Plaintiffs,

21 v.

22 TIMOTHY H. JACKSON and JODI L.
23 JACKSON, husband and wife and the marital
community comprise thereof and BRYDON
PAINTING SERVICES, INC., a Washington
corporation,,

24 Defendants.

25 CAUSE NO. C06-5145KLS

26 ORDER DENYING PLAINTIFFS'
MOTION FOR SUMMARY JUDGMENT

27 This matter comes before the court on the Summary Judgment Motion filed on behalf of the
28 Plaintiffs (Dkt. #15). The defendants filed their Response (Dkt. #17), the plaintiffs filed their Reply (dkt.

1 #22) and the defendants filed a Surreply (Dkt. #25).

2 This is an action filed by the plaintiffs alleging entitlement to payment for contribution to the Trust
3 Funds for union related work performed by employees of Brydon Painting Service. The plaintiffs' motion
4 is based on the assumption that contribution rate increases (agreed to by the Union after February 28,
5 2005) apply to the defendant pursuant to the automatic renewal language found in paragraph 23.1 of the
6 Western Washington Area Agreement for the Painting Industry. Paragraph 23.1 states that the Agreement
7 remains in effect until February 28, 2005 and "shall automatically renew itself from year to year thereafter"
8 unless certain steps are taken. The Court notes that the Agreement itself sets forth specific contribution
9 rates. The defendant denies that he agreed to any increase in contribution rates after February 28, 2005
10 and further asserts that any payments he made were "on the basis of our calculations on the contract that
11 was in force which expired 2005." (Dkt. #18, page 3, lines 14 and 15). This court further notes that one of
12 the documents provided by the plaintiff is a letter dated September 27, 2006 to Jodi Jackson from Melissa
13 Kollman which advises "you have been using old rates in your contribution calculations for quite some
14 time." (Part of Exhibit B).

15 The auditor noted a dispute as to the regarding the contribution rate in his letter report (not
16 presented to the court under oath) and reached his conclusion as to the amount due and owing on the
17 assumption that the new contribution rates applied.

18 There are material issues of disputed facts in this case and the motion is therefore **DENIED**.

19 DATED this 9th day of February, 2007.

20 _____
21 /s/ Karen L. Strombom
Karen L. Strombom
U.S. Magistrate Judge
22
23
24
25
26
27
28